

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISCO Industries, LLC,

Plaintiff,

v.

NORTH BAY CONSTRUCTION, INC., ET AL.,

Defendants.

No. C 06-7082 CW

ORDER DENYING  
PLAINTIFF'S MOTION  
TO STAY PROCEEDINGS

Plaintiff ISCO Industries, LLC, moves to stay all proceedings in this case pending the resolution of its motion to vacate the Western District of Kentucky court's order transferring the case to this Court. Defendants North Bay Construction and Steve Geney oppose the motion. The matter was taken under submission on the papers. Having considered the parties' papers and the evidence cited therein, the Court DENIES Plaintiff's motion to stay.

As stated in the Court's earlier order, in November, 2006, the case was transferred to this Court by a Western District of Kentucky Court. Defendants filed their answer and a crossclaim on

1 December 7, 2006. Plaintiff filed its answer to the crossclaim on  
2 December 27, 2006. Plaintiff informs the Court that it has filed  
3 in the Kentucky court a motion to vacate the Kentucky court's order  
4 transferring the case to this Court. Therefore, Plaintiff seeks to  
5 have the proceedings in this Court stayed pending the Kentucky  
6 court's decision on the motion to vacate.

7 Plaintiff's primary argument in its motion to stay is that the  
8 "situation is similar to having overlapping lawsuits in multiple  
9 courts." Motion at 3. However, as Defendants point out, there are  
10 no overlapping lawsuits. There is only one suit at issue here.<sup>1</sup>  
11 Therefore, if the Kentucky court vacates its order transferring the  
12 case to this Court, the case can be returned to the Kentucky court  
13 at whatever stage it is in at that time. There is no danger that  
14 the Kentucky court will issue an order that contradicts an order of  
15 this Court.

16 Further, the only dates currently set before this Court relate  
17 to initial disclosures, the creation of a case management statement  
18 and an initial case management conference pursuant to Federal Rule  
19 of Civil Procedure 26(f). That rule applies in the Kentucky court  
20 as it does here. Therefore, any disclosures made or case  
21 management statement created can carry equal weight if the case is  
22 transferred back to the Kentucky court.

---

23  
24 <sup>1</sup>The Court notes that Plaintiff has filed another suit in the  
25 Sonoma County Superior Court based on the same factual basis and  
26 legal claims. Defendants answered and cross-complained against  
27 Plaintiff in that suit and filed a motion to compel arbitration and  
28 to stay the suit. Plaintiff then moved to stay that suit, pending  
the decision of the Kentucky court on the transfer of this case.  
Defendants' motion to compel arbitration and to stay the suit is  
currently pending before the state court.

1 For the foregoing reasons, the Court DENIES Plaintiff's motion  
2 to stay the proceedings (Docket No. 9).

3 IT IS SO ORDERED.

4 1/24/07

5 Dated: \_\_\_\_\_



\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge